

## Department of Veterans Affairs

## § 38.617

Committee reports and recommendations and make recommendations to the Secretary based on Committee actions.

(b) The Committee will evaluate and study cemeterial, memorial and burial benefits proposals or problems submitted by the Secretary or Under Secretary for Memorial Affairs, and make recommendations as to course of action or solution. Reports and recommendations will be submitted to the Secretary for transmission to Congress.

### § 38.602 Names for national cemeteries and features.

(a) *Responsibility.* The Secretary is responsible for naming national cemeteries. The Under Secretary for Memorial Affairs, is responsible for naming activities and features therein, such as drives, walks, or special structures.

(b) *Basis for names.* The names of national cemetery activities may be based on physical and area characteristics, the nearest important city (town), or a historical characteristic related to the area. Newly constructed interior thoroughfares for vehicular traffic in national cemetery activities will be known as *drives*. To facilitate location of graves by visitors, drives will be named after cities, counties or States or after historically notable persons, places or events.

### § 38.603 Gifts and donations.

(a) Gifts and donations will be accepted only after it has been determined that the donor has a clear understanding that title thereto passes to, and is vested in, the United States, and that the donor relinquishes all control over the future use or disposition of the gift or donation, with the following exceptions:

(1) Carillons will be accepted with the condition that the donor will provide the maintenance and the operator or the mechanical means of operation. The time of operation and the maintenance will be coordinated with the superintendent of the national cemetery.

(2) Articles donated for a specific purpose and which are usable only for that purpose may be returned to the donor if the purpose for which the arti-

cles were donated cannot be accomplished.

(3) If the donor directs that the gift is donated for a particular use, those directions will be carried out insofar as they are proper and practicable and not in violation of Department of Veterans Affairs policy.

(4) When considered appropriate and not in conflict with the purpose of the national cemetery, the donor may be recognized by a suitable inscription on those gifts. In no case will the inscription give the impression that the gift is owned by, or that its future use is controlled by, the donor. Any tablet or plaque, containing an inscription will be of such size and design as will harmonize with the general nature and design of the gift.

(b) Officials and employees of the Department of Veterans Affairs will not solicit contributions from the public nor will they authorize the use of their names, the name of the Secretary, or the name of the Department of Veterans Affairs by an individual or organization in any campaign or drive for money or articles for the purpose of making a donation to the Department of Veterans Affairs. This restriction does not preclude discussion with the individual offering the gift relative to the appropriateness of the gift offered.

### § 38.617 Prohibition of interment or memorialization of persons who have been convicted of Federal or State capital crimes.

(a) *Persons prohibited.* The interment in a national cemetery under control of the National Cemetery Administration of the remains of any person, or memorialization in such a cemetery of such person, shall not take place absent a good faith effort by the affected cemetery director, or the Under Secretary for Memorial Affairs, or his or her designee, to determine whether such person is barred from receipt of such benefits because the individual for whom interment or memorialization is sought is:

(1) A person identified to the Secretary of Veterans Affairs by the United States Attorney General, prior to approval of interment or memorialization, as an individual who has been convicted of a Federal capital

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crime, and whose conviction is final, other than a person whose sentence was commuted by the President.

(2) A person identified to the Secretary of Veterans Affairs by an appropriate State official, prior to approval of interment or memorialization, as an individual who has been convicted of a State capital crime, and whose conviction is final, other than a person whose sentence was commuted by the Governor of a State.

(3) A person found under procedures specified in § 38.618 to have committed a Federal or State capital crime but avoided conviction of such crime by reason of unavailability for trial due to death or flight to avoid prosecution.

(b) *Notice.* The prohibition referred to in paragraph (a)(3) of this section is not contingent on receipt by the Secretary of Veterans Affairs or any other VA official of notice from any Federal or State official.

(c) Receipt of notification. The Under Secretary for Memorial Affairs is delegated authority to receive from the United States Attorney General and appropriate State officials on behalf of the Secretary of Veterans Affairs the notification of conviction of capital crimes referred to in paragraphs (a)(1) and (2) of this section.

(d) *Decision where notification previously received.* Upon receipt of a request for interment or memorialization, where the Secretary of Veterans Affairs has received the notification referred to in paragraph (a)(1) or (2) of this section with regard to the deceased, the cemetery director will make a decision on the request for interment or memorialization pursuant to 38 U.S.C. 2411.

(e) *Inquiry.* (1) Upon receipt of a request for interment or memorialization, where the Secretary of Veterans Affairs has not received the notification referred to in paragraph (a)(1) or (a)(2) of this section with regard to the deceased, but the cemetery director has reason to believe that the deceased may have been convicted of a Federal or State capital crime, the cemetery director will initiate an inquiry to either:

(i) The United States Attorney General, in the case of a Federal capital crime, requesting notification of

whether the deceased has been convicted of a Federal capital crime; or

(ii) An appropriate State official, in the case of a State capital crime, requesting notification of whether the deceased has been convicted of a State capital crime.

(2) The cemetery director will defer decision on whether to approve interment or memorialization until after a response is received from the Attorney General or appropriate State official.

(f) *Decision after inquiry.* Where an inquiry has been initiated under paragraph (e) of this section, the cemetery director will make a decision on the request for interment or memorialization pursuant to 38 U.S.C. 2411 upon receipt of the notification requested under that paragraph, unless the cemetery director initiates an inquiry pursuant to § 38.618(a).

(g) *Notice of decision.* Written notice of a decision under paragraph (d) or (f) of this section will be provided by the cemetery director to the personal representative of the deceased, along with written notice of appellate rights in accordance with § 19.25 of this title. This notice of appellate rights will include notice of the opportunity to file a notice of disagreement with the decision of the cemetery director. Action following receipt of a notice of disagreement with a denial of eligibility for interment or memorialization under this section will be in accordance with §§ 19.26 through 19.38 of this title.

(Authority: 38 U.S.C. 512, 2411, 7105)

[70 FR 4769, Jan. 31, 2005, as amended at 73 FR 35352, June 23, 2008]

### **§ 38.618 Findings concerning commission of a capital crime where a person has not been convicted due to death or flight to avoid prosecution.**

(a) *Inquiry.* With respect to a request for interment or memorialization, if a cemetery director has reason to believe that a deceased individual who is otherwise eligible for interment or memorialization may have committed a Federal or State capital crime, but avoided conviction of such crime by reason of unavailability for trial due to death or flight to avoid prosecution, the cemetery director, with the assistance of the VA regional counsel, as necessary,